

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SEBE WOODY

CIVIL NO. 05-1055 (JMR/JSM)

Plaintiff,

v.

REPORT AND RECOMMENDATION

BUREAU OF PRISONS, et al.,

Defendants.

The above matter came on before the undersigned upon defendants' Motion to Dismiss [Docket No. 25]. This matter has been referred to the undersigned Magistrate Judge for a Report and Recommendation by the District Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1(c).

The action arises out of plaintiff's June 2, 2005 action under 42 U.S.C § 1983 pertaining to his right to smoke tobacco products while incarcerated. Plaintiff sought declaratory, injunctive and monetary relief.

On August 12, 2005, the United States Marshal served the Summons and Complaint on the individual named defendants. See Docket No. 15. Eventually this Court determined that service on defendants was ineffective because a copy of the Summons and Complaint was not delivered in person or sent by the United States Marshal by certified or registered mail to the appropriate person for the United States Attorney for the District of Minnesota, to the Attorney General of the United States in Washington, District of Columbia, and to the Federal Bureau of Prisons. See Order dated January 2, 2008, p. 4. [Docket No. 23]. Consequently, this Court ordered the United States Marshal to make effective service of the Summons and Complaint on the appropriate person designated by the United States

Attorney for the District of Minnesota, on the Attorney General of the United States in Washington, District of Columbia, and on the Federal Bureau of Prisons, on or before January 17, 2008. Id., p. 1. On January 16, 2008, service was effectuated by the United States Marshal on the Federal Bureau of Prisons. See Docket No. 24.

On March 4, 2008, defendants filed a Motion to Dismiss [Docket No. 25]. On March 12, 2008, this Court issued the following Order:

1. Plaintiff shall serve and file a Response to Defendants' Motion to Dismiss on or before April 2, 2008.
2. Defendant may serve and file a Reply on or before April 14, 2008.
3. The motion will be taken under advisement upon the written submissions of the parties.
4. If plaintiff fails to adhere to the deadlines set forth in this Order, the Court will recommend dismissal of the claim for failure to prosecute.

March 12, 2008 Order. [Docket No. 29] (emphasis added).

On March 18, 2008, the Clerk's office received the Order back as undeliverable; it was then resubmitted to plaintiff's new address. See Docket No. 30. As of this date, plaintiff has failed to serve a response to defendants' Motion to Dismiss in violation of this Court's March 4, 2008 Order. Indeed, the last contact plaintiff has had with the Court regarding his case was on August 14, 2006, at which time he filed a Notice of Change of Address. [Docket No. 22]. In addition, this Court has learned that on March 2, 2007, plaintiff was released from prison. See Declaration of Ann C. Norenberg.

Plaintiff has not communicated with the Court for more than twenty-two months. Further, based on the express warnings regarding the consequences that would follow if he

failed to comply with the requirements of the Court's March 4, 2008 Order, and plaintiff's continued failure to prosecute his case since August of 2006, it is now recommended that plaintiff be deemed to have abandoned this action, and that the action be dismissed, with prejudice, for failure to prosecute. See Fed. R. Civ. P. 41(b) (actions may be dismissed for failure to comply with court orders); see also Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing that a federal court has the inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases"); Givens v. A.H. Robins Co., 751 F.2d 261, 263 (8th Cir. 1984) (finding that dismissal with prejudice under Rule 41 is appropriate where there is a willful disobedience of a court order or continued or persistent failure to prosecute a complaint).

RECOMMENDATION

For the reasons set forth above and based on all the files, records, and proceedings herein,

IT IS RECOMMENDED THAT:

1. Defendants' Motion to Dismiss [Docket No. 25] be **GRANTED**.
2. Plaintiff's Complaint [Docket No. 1] is **DISMISSED with Prejudice**.

Dated: June 19, 2008

s/ Janie S. Mayeron
JANIE S. MAYERON
United States Magistrate Judge

Under D.Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **July 7, 2008**, a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under this Rules shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable directly to the Circuit Court of Appeals.